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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 85-357112 March 17, 1986

SUBJECT: Revenue and Taxation - Exemption Of  
Manufacturing Establishments Upon Transfer Of  
Ownership.

SYLLABUS: The exemption afforded to new manufacturing  
establishments would not include an existing  
manufacturing plant acquired by new owners.

TO: Honorable Grace M. Gibson  
Marlboro County Auditor

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTION: Does the exemption afforded by Article X,  
Section 3 (g) and § 12-37-220 A (1) for a new manufacturing  
establishment apply when an existing manufacturing  
establishment is acquired by a new owner?

APPLICABLE LAW: Article X, Section 3 (g) of the South  
Carolina Constitution and § 12-37-220 A (1) of the South  
Carolina Code of Laws.

DISCUSSION:

The constitutional and statutory provisions exempt new  
manufacturing establishments located in any county after  
July 1, 1977 and certain additions to existing manufacturing  
establishments. It is not known when the manufacturing  
establishment was located within Marlboro County. As  
understood the manufacturer ceased to do business and sold  
the establishment to new owners. The owners will continue  
to manufacture. The inquiry is thus whether this is "a new  
manufacturing establishment located" in Marlboro County  
after July 1, 1977. In our opinion, it is not. In  
considering a similar question as it related to income  
taxes, our court in Chronicle Publishers, Inc. v. South  
Carolina Tax Commission, 244 S.C. 192, 136 S.E.2d 261,  
stated:

According to the terms of the statute,  
the deduction is allowed in favor of a  
taxpayer who has 'established a new  
business or industry in this State.'

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Plaintiff simply is not in this situation. Instead, it is a new corporation which acquired and improved established businesses. These businesses were establishments when the statute was enacted and they continued as such after the change in ownership.

The court there favorably quoted from Morris v. Riley, 135 Miss. 1, 99 So. 466, 468. There a plant was destroyed and later rebuilt by a new owner. The court held that it was an old establishment repaired and added to.

In a later case, Cummins Engine Co., Inc. v. Thomas, 267 S.C. 230, 230 S.E.2d 217, the court was concerned with the abandonment of an existing manufacturing establishment and its acquisition by a new manufacturer. The manufacturer, Avco Corporation, ceased production at the plant in 1971. Avco removed substantially all of the manufacturing machinery in the establishment. There was an abandonment of manufacturing by Avco. The property was acquired by Cummins in 1973 and it expended large sums installing machinery to manufacture engines, the first being produced in December 1973. It was held that Cummins had created a new manufacturing establishment and was entitled to the exemption. As understood, such facts are not here applicable. In the present circumstance, the manufacturing is merely continued by new owners.

CONCLUSION:

The exemption afforded to new manufacturing establishments would not include an existing manufacturing plant acquired by new owners.

JLAJr/jws